

# DECLARATORY RULING

# 1-2000

MARCH 10, 2000

This ruling is issued in response to questions arising about the status of Monogram Credit Card Bank as a bank under Georgia law.

Monogram's application for charter and approval of Articles of Incorporation were approved by letter from then Commissioner E. D. "Jack" Dunn on February 16, 1988. Monogram was chartered as a credit card bank under Title 7 of the Official Code of Georgia Annotated ("O.C.G.A."). Any bank wishing to organize and be chartered under Georgia law must follow the statutes in Part 8 ("Incorporation of Banks and Trust Companies") of Article 2 of Chapter 1 of Title 7 (the "Financial Institutions Code of Georgia"). This part is applicable to credit card banks. O.C.G.A. § 7-5-3. They must follow the same procedures for incorporation, structure and management as any bank. Credit card banks are subject to all of the provisions of Chapter 1 of Title 7, except where they are limited by Chapter 5, the Credit Card Bank Act. O.C.G.A. § 7-5-6(a). Credit card banks, e.g., are not subject to the branching restrictions in Part 18 of Article 2. O.C.G.A. § 7-5-6(b).

No bank chartered in Georgia may open for business unless it has been approved for deposit insurance satisfactory to the Department, which is insurance provided by the Federal Deposit Insurance Corporation. O.C.G.A. § 7-1-244. No provisions in the Credit Card Bank Act exempt credit card banks from this statute. The provisions regarding organization, structure and necessity for deposit insurance apply to credit card banks because: (1) Georgia law specifically provides that they do, as cited above, and (2) a credit card bank is a "bank" as defined in O.C.G.A. § 7-1-4(7).

(7) "Bank" means a corporation existing under the laws of this state on April 1, 1975, or organized under this chapter and *authorized to engage in the business of receiving deposits withdrawable on demand or deposits withdrawable after stated notice or lapse of time*; "bank" shall also include national banks located in this state for the purpose of Part 6 of Article 2 of this chapter, relating to deposits, safe-deposit agreements, and money received for transmission, and Article 8 of this chapter, relating to multiple deposit accounts; provided, however, that "bank" shall not include a credit union, a building and loan association, a savings and loan association, or a licensee under Article 4 of this chapter (emphasis added).

A credit card bank meets this definition in part because of its ability to engage in the business of accepting deposits withdrawable after stated notice or lapse of time. Monogram would not be a "bank" under Code Section 7-1-4 unless it had the ability to engage in the business of receiving deposits; it is a key indicia to determine whether an entity is a bank. (See O.C.G.A. § 7-1-590(1) ... The power to receive deposits or the performance of any transaction directly or through an affiliate or agent relative to a deposit account shall be presumed to constitute a banking business.)

Georgia law at the time of Monogram's initial chartering provided that the federally insured deposits it would take be only from affiliates. O.C.G.A. § 7-5-3. In July 1999, Georgia law was amended to allow the same type of deposits to be taken from anyone, so long as the amount of the deposit met or exceeded \$100,000. At no time did this Department ever contemplate that a credit card bank was not a bank for either Georgia or FDIC purposes, since without its deposit taking ability (either before or after July 1999) it would not be a bank under Georgia law, thus making the provisions in O.C.G.A. § 7-5-6(a) and (b) regarding applicability of banking laws make little sense. Further, if a credit card bank could not take deposits and receive FDIC insurance, it could not comply with the requirements for all banks to take deposits (O.C.G.A. § 7-1-4) and to have deposit insurance (O.C.G.A. § 7-1-244).

Additionally, my understanding of the intent behind the enactment of Chapter 5 of Title 7, Georgia's credit card statute, was that it was intended to allow credit card banks to apply federal law regarding the exportation of interest rates as set out in Section 27(a) of the Federal Deposit Insurance Act, 12 U.S.C. § 1831d(a). Both national and state banks employ this privilege, under separate authority.

Steven D. Bridges, Commissioner  
Department of Banking and Finance

